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LEON PETRAZYCKI'S THEORY OF THE STATE AND LAW

- Poland -

by Mieczyslaw Maneli

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#### LEON PETRAZYCKI'S THEORY OF THE STATE AND LAW\*

Following is a translation of an article by Mieczyslaw Manelli in the Polish-language periodical Nowe Drogi (New Paths, Warsaw, Vol. XIV, No. 5 (132), May 1960, pages 83-97).

\*At the end of last year, the State Scientific Publishing House released two of Petrazycki's works of fundamental significance for those studying the history of state and legal theory: Introduction to the Study of Law and Morality and The Theory of Law and the State in Connection with the Theory of Morality. These two works represent the principal life contribution of Leon Petrazycki to the field of philosophy in general and the philosophy of law in particular. For the time being, apart from the Introduction, only volume I of the Theory of Law and State has appeared in book stores. Volume II is being printed. These volumes have appeared in translation by the recently deceased professor at the Jagiellonian University, Jerzy Lande.

During the first decades of this century, the lecture halls of the law school at Moscow University were filled with students listening to the presentations of Leon Petrazycki. The many interested persons and those desiring knowledge were attracted by the exceptional erudition of the lecturer, his public-speaking ability, originality of presentation, logic, and consistency in thinking. Also during the years of Stolypin's reaction, Petrazycki was a spokesman for economic liberalism and political freedom which always made a great impression upon the students in the humanities.

Petrazycki was born in a Polish family of nobility, residing in the Witebsk area, at the family estate of Kollatajewo. His father participated in the January /1863/ uprising and was killed in it. Leon was able to be graduated from a secondary school on his own and subsequently finished law school at the University of Kiev. Upon receiving a scientific grant, he left for Germany, France and England. The first results of his studies abroad immediately brought him an almost all-European fame. In 1892 he published in German a study entitled Die Fruchtverteilung beim Wechsel der Nutzungsberechtigten and then Die Lehre vom Einkommen (volume I, 1893; volume II, 1895). In both of these monographs, devoted to the analyses of certain problems in Roman law, Petrazycki simultaneously assumed an attitude toward certain questions applicable at that time which German legal circles

were especially interested in. He analyzed the basic structure of legal theory, spoke critically about the proposal for a German civil code which at the time was the pride of German bourgeois lawyers and the subject of discussion far beyond the borders of Germany. This was a draft civil code, consistently expressing the bases upon which a bourgeois society is founded, although this was being done in a modern way. The code went further than the classical creation of bourgeois legal thought, prepared during the first years of the nineteenth century, the Code Napoleon.

Petrazycki attempted to show that the German draft was something put together by coincidence from the methodological viewpoint, but that meritoriously it represented something negative for social life and its development, that it included many civil-political errors.

After his return to Russia, Petrazycki in the course of a short period became an associate professor at St. Petersburg University and then starting in December 1898 was made a full professor at Moscow University for encyclopedic and historical philosophy of law where he remained until 1918. After the establishment of an independent Polish state, Petrazycki arrived in Poland where he assumed a full professorship of sociology at the University of Warsaw.

The main period of his creativeness falls during the first decade of this century. In 1900, he published his Outline of Legal Philosophy, representing a sketch, the fundamental ideas of which he subsequently developed in two main works in the field of state and legal theory. They appeared in the years 1905-1907. Prior to 1910, he published corrected editions of these works. In 1907 also, a two-volume work by Petrazycki on the theory and politics of academic teaching, entitled The University and Science, and in 1911 Shares, Stock Exchange Speculation, and Economic Crises appeared. During this period, numerous articles appeared in periodicals, and there remain in manuscript form works in the field of logic as well as sociology which have not been published to date.

#### 1. THEORY OF EMOTIONS

The point of departure in Petrazycki's discussions in the field of law are the psychic experiences in the life of the individual. Petrazycki opposes what he calls traditional psychology, which takes into consideration only such elements of consciousness as senses, feelings, and will (Introduction, page 214) but has not observed the existence of a fourth element represented by emotions which according to Petrazycki are basic. They allegedly represent the fundamental experiences, the basic elements of psychic man which are characterized by not having a one-sided nature but are two-sided, i.e. active-passive in contrast to the will with its one-sided active character, as well as senses and feelings with their one-sided passive nature. Emotions are subdivided by Petrazycki into apulsive and repulsive, i.e., emotions inducing a man to certain actions or repelling him from them: "... emotions rule physical life, movements, and many other physiological processes, as well as the psychic life of beings endowed with consciousness. They designate casually the direction and the energy of attention as well as the process of thoughts and thinking, they are the source of power, liveliness and the

character of observations as well as what is retained from recognition processes (memory), the feelings of satisfaction and dissatisfaction remain with them in a casual relationship. They direct the will, removing the contrary strivings of the will and calling forth decisions by the will which correspond to their demands, insofar as such decisions take place in certain conditions (mostly when such action is postponed to the future) and precipitate action based upon the will instead of regular impulsive and directly emotional actions' (Introduction, page 475).

In accordance with this theory, emotions are something constant, continuously regulating the behavior of people, their sympathies and antipathies, stimulating to action or restraining from it. However, it is known that the psychology of man is constantly being changed and undergoing continual transformations. If this is so, then the causes should be sought out in the consciousness of man but in what exists on the outside of man which is the external source of his thoughts and of which consciousness is the reflection. Even if in the psychology of man it were possible to separate such elements as emotions (from the viewpoint of modern psychology, this is a very doubtful thing; Petrazycki's concept of emotions is rejected by psychology based upon the foundations of dialectical materialism as well as by non-Marxist psychologists), there are still no bases for acknowledging that this separate element of man's consciousness is the creator and the master of the entire psychic life of man and in consequence the demiurge - as would appear from subsequent thinking of Petrazycki - of the entire life of society.

The theory of emotions by Petrazycki is thus a fairly spontaneous construction.

With the creation of given emotions - Petrazycki later states - is connected the imagination of certain actions. When the connection between emotions and concrete imaginations transforms itself into something permanent, then the result of this permanent unification becomes behavioral norms.

## 2. ETHICAL, LEGAL AND MORAL NORMS

One of the groups of behavioral norms was designated by Petrazycki as ethical norms, which in turn are subdivided into legal as well as moral norms. Ethical norms are characterized by their imperative nature, i.e., in a clear manner they order a man's designated behavior in prescribed situations, as well as authoritative nature (and even more precisely: mystical-authoritative), i.e. people imagine that the content of these norms has been prescribed by some higher authority (king, parliament, gods etc.). Since individuals do not always comprehend who this authority is but at the same time consider that ethical norms derive from some authority, hence ethical norms can be described as was done by Petrazycki by the term mystical-authoritative. The difference between legal norms and moral norms (although both are ethical) is based upon the fact that moral norms are of an imperative and no claim nature, i.e. they order designated behavior in man but on the other hand do not provide any bases for demanding one or another kind of depositions. A classical example, used by Petrazycki several times, is the relationship between a person offering alms and a

beggar. The alms giver is only morally bound to aid the beggar, but the beggar has no claim, no right to demand anything from his benefactor. What is more, states Petrazycki, if moral norms gave anybody rights, then they would lose their quality, their originality and exceptionalness. The text of the Holy Gospel where the good Christian who has been struck on the cheek should offer the other represents only a one-sided moral directive which would make no sense at all, if the man who struck the blow could demand from his victim that the latter behave according to the Gospel.

The matter of legal norms is different. They possess in contrast to moral norms a two-sided character, i.e. an imperative-attributive, directing and claiming nature. For illustrative purposes, Petrazycki uses a second classic example, the relationship between the lender and the borrower. The borrower has the duty to return the debt he has incurred, and the lender may demand the return of the debt; he has a claim in relationship to the debtor. The lender, in contrast to the beggar, has something attributed to him (from attribuere - attribute, from which comes the term for legal norms: Imperative-attributive), and hence his mode of behavior toward the debtor may be completely different than that of the beggar toward his benefactor. The feeling of the lender is thus much better, he feels more sure of himself, free, independent, knows what his position is in society. Hence law - concludes Petrazycki - plays a positive role in society, since it influences the psychic man positively, performs a educational function in relation to the individual units, law is unified with the entire area of human psychology, i.e. legal psychology. The state as well as all public institutions are, according to Petrazycki, also the result of this legal psychology, the imperative-attributive psychology.

Before we pass on to other, more detailed thinking in the field of state and legal theory, it should be noted that the acknowledgment of moral norms as something one-sidedly binding also represents a construction which contradicts social experiments. All moral rules have been formulated in the course of historical development for the purpose, i.e. that they bind people to a prescribed behavior, and public opinion forces compliance with these norms. Moral duties to assist those in need (especially when these are relatives by blood or marriage), honest behavior vis a vis close ones and society, etc. are of the claim type (according to Petrazycki's terminology); certain individuals (perhaps not even directly involved) may castigate and censure those who violate these norms, forcing by means of various social reaction the adherence to given norms. In no society are there any one-sided norms for coexistence, because each norm obligates somebody, allocates something to somebody else, even though the relationship between these two aspects or results from the norms may be considerably more complicated than in the case of legal norms.

The existence of the state, according to Petrazycki, derives from emotions as well as from those psychic characteristics which he describes as imperative-attributive.

### 3. ESSENCE AND TASKS OF STATE AUTHORITY

The state is a "collection of people, united because certain individuals in the group have been ascribed certain rights, whereas others corresponding legal obligations (duty of submitting to the regulations of the first and certain others)." [See Note]. State authority is not at all something real but "the projection of emotions, an emotional phantasy" which means namely "a special kind of law, ascribed to certain individuals." [See Note]. (Notes: Introduction, page 34; and Theory, Vol. I, paragraph 12, pages 276-277.)

Thus authority has no reality, but the laws which have ascribed to certain persons e.g. the right to wear a truncheon whereas to others their imperative-attributive psychology orders respect for the rules of the persons who carry the truncheon. Not the real and objective force which is represented by authority decides about obeying but rather our psyche is the source of authority, the source of its power, the reason why authority issues orders and why we obey. Does this not arouse the doubt that everything about which Petrazycki writes - if we can use such an expression - is standing on its head?

The structure of the state and society should be - according to Petrazycki - so organized that as little time as possible is lost in court and quarrels, because that causes a loss of social energy which could be expended in the conduct of business.

His analysis of certain phenomena in the capitalist system is based by Petrazycki upon the foundations of almost a classical liberalism. Owners of property have the jus utendi et abutendi (right of use and abuse) with regard to the objects they own. This is a classical Roman law designation, adopted by liberal civil bourgeois codes and especially by the Code Napoleon, a designation expressing the idea that an owner may without any regard whatsoever do with a given object what he wants, he may act completely egotistically and not take into consideration any social requirements (only that he not violate existing legal regulations) which condition creates motives of an egocentric nature but also - and here, i.e. Petrazycki ties in with the liberal school - private property creates also motivations of an altruistic character. A man thus cares for his family and simultaneously becomes accustomed to socially useful productive activity. Who works for himself also works at the same time for all. He could not earn anything, if he did not attempt to produce much, transport goods where they are necessary, etc. Certain private owners are conscious of their social role, others are not. However, this according to Petrazycki essentially does not have great significance. Family and inheritance law is egotistical, this is true, but simultaneously plays a socially useful role, because it encourages future leavers of inheritances to expend their energy usefully and judiciously.

Thus bourgeois law - which is emphasized heavily by Petrazycki - is based upon an egotistical-altruistic motivation: the merchant does not have to transport his goods to some place in the sticks, but he wants to do this and hence makes it convenient for all people.

Petrzaycki is not just an apologist for the capitalist system, although he does approve completely of this system. In contrast to un-  
critical admirers of the capitalist system, the approval of Petrazycki also contains elements of a negation. He treats capitalism and the development of private ownership of the means of production as a necessary medium before passing into the higher stage of social development which he himself calls socialism.

What will this so-called "socialism" look like? This is not made more precise by Petrazycki. It is possible to conclude directly from his writings that during that period not private but socialized ownership of the means of production will exist, that people will change their attitude toward work and that of their own will they will work and behave as they do now under this or that type of pressure. How will we arrive at this system? When will this moral maturity of people be attained? To these questions Petrazycki either gives no answer, or else his answers come down to the innocuous thesis: through a further adherence to the social principles of capitalism.

#### 4. THE CONCEPT OF "POLITICS OF LAW"

The theory of the state, law, and morality is not conceived by Petrazycki as a purely theoretical science. On the contrary, Petrazycki considers that science about the motivational reaction of law should become the basis for scientific politics.

Law according to Petrazycki influences the development of the human psyche, changes the character of people in the direction of adapting this nature into social life, and transforms itself appropriately to these psychic changes. Here lies, in Petrazycki's words, the key to uncovering the secret of developmental laws in historic trends which up to that time allegedly nobody had discovered before him. This fundamental trend of the general historical process in creating and changing the law depends upon applying the motivation and legal pedagogy to the condition of the social psyche, so that as a result of psychic reaction by the appropriate system of legal procedure individually and en masse ever more will we proceed toward the common good. In accordance with the adaptation of the human psyche to social life, also law will change. Hence, the later systems are more demanding of the citizen than earlier ones, they more frequently appeal to the common sense of the citizen, whereas the earlier systems and their laws were adapted to a psyche that was more primitive. Earlier systems, adapted to a more brutal psyche and socially less valuable, had to use such penalties as the quartering of a debtor who did not pay his debt, selling into slavery, flogging in the market place until a debt was paid. The adaptation of law to the psyche does not take place in such a manner that individual wise persons investigate and measure the progress in the human psyche and correspondingly make the laws. This takes place in society where a continuous unconscious psychological-social application is in progress. Petrazycki acknowledges that the contacts of people among one another acquire the character of psychological intercourse, during which there takes place a mutual infection "not only intellectual but also emotional. In this intercourse there are transmitted and passed on various ideas and



emotions, there arise repulsing emotions and antipathies, next come attracting emotions and sympathies. During this social intercourse there originate average emotional resultants, average emotional evaluations which are created by numerous facts in a given category during the life of successive generations" (Theory, paragraph 51). In relationship to such phenomena as prevarication, liable, adultery, robbery, etc. these average emotional resultants obtain inescapably a condemning-repulsive character, despite the fact that those committing such acts may receive benefits therefrom. The task of legal science is to discover the theory of such psychological-social processes, basing oneself upon scientific sociology, which will permit the creation of a scientific politics of law. And then the unconscious genius of adaptability will be replaced by conscious activity.

The ideal - states Petrazycki in a special book written on this subject and entitled The Social Ideal and the Renaissance of Natural Law (Warsaw: 1925) - is the attainment of such a condition in which love will rule. Only from the viewpoint of motivational and pedagogical reaction by law - according to Petrazycki - can one explain the existence of slavery, serfdom, capitalism, and finally the higher development of consciousness and human nature can explain the existence in the current epoch of the beginnings of socialism. The ideal of the future is that people do everything which is socially useful without coercion, sponse sua, in order to precipitate the solidarity of all humanity, "the ability and readiness to serve the universal cause without special penalties or rewards" (Social Ideal and Renaissance of Natural Law, Warsaw: 1925, p. 38).

In society there take place processes superficially similar to what Darwin discovered as the struggle for survival and natural selection. This selection does not take place, however, as it does in the animal world by means of combat for death or life, but with the aid of emotions there takes place the expulsion of what is worse by that which is better, that which is less appropriate by that which is more appropriate. This optimistic description of social development in general and of legal systems in particular is at the end of the second volume, Theory of State and Law.

In the course of time, if no catastrophe intervenes on a world scale, again - in the words of Petrazycki - people will be ruled by the feeling of love. He adds that there is no need to preach a gospel, but it is possible to link this with high ideals regardless of who is propagating them.

Capitalism is so much higher - in Petrazycki's opinion - from previous systems that it takes for granted a certain industriousness. However it must continue to pressure people by means of hunger in order to force them to create the objects required by society. Where people are not appropriately trained, there - emphasizes Petrazycki - nothing should be socialized but left as private property.

Petrazycki does not notice, and within the philosophical framework accepted by him it can not even be understood, that the development of these or of other moral concepts and habits represents the final result of changes in the method of production and of the social system. Changes in the psyche

and morality of society are not the reason why capitalistic property arose in place of the feudal system but are the result of these social changes. One thing however must be emphasized here: Petrazycki accurately evaluated capitalistic discipline as a discipline based upon the threat of hunger ultimately. He also accurately sensed that the development of society must proceed toward the socialization of production and changes in the existing principles of social coexistence.

"In general law exists as a result of insufficient as yet adaptation of the existing human psyche to the needs of the new life in society. Its task is based upon the need of making itself unnecessary and disappearing" (Social Ideal, op. cit , p. 74).

This ideal - according to Petrazycki - is not expounded in an artificial manner but is deduced from the course of history to date. This is not an ideal in a moral sense but rather above morality. What is the meaning, asks Petrazycki, of a norm like "do not kill" if somebody would want to voice it in a society of pigeons (if such a society would exist)? What is more, morality itself will some time disappear, since it also is the result of defined social relationships. Thus the ideal of love in humanity is for Petrazycki not only above the law but is also used in an extra-moral sense. In what way can we reconcile the statements that law and morality are created by consciousness with the statement that morality is the result of defined social relationships. This contradiction in his own system could not be solved by Petrazycki himself.

In general to work out a conceptual framework for a science of legal politics, Petrazycki had to proceed outside of investigating only what was occurring in individual human minds and begin to analyze processes of a social nature, namely the method by which man reacts upon man, society upon the individual. But by the same token, he crossed outside of his own philosophical system, outside of subjective idealism.

One more thing strikes the reader of Petrazycki's works: the author, who so often bases himself upon existing and defined social trends, did not ask himself the question that arises of its own accord: what is the reason why people become contaminated during a given period with such and not other emotions? Why, for example in the nineteenth and twentieth centuries, did ethical norms attain such sympathy which - as Petrazycki states - pertain to the socialization of the economy? Is it not obvious that the search for causes in the consciousness of individual persons can not explain the correctness of these processes. It is necessary to go deeper, i.e. to the material causes. Petrazycki brought his theory to the border at which its weakness can be seen. Against his own will, the conclusion arises that it is necessary to search for the materialistic sources of social processes.

Petrazycki is right when he states that the politics of law are connected with the investigation of psychic processes, but this thesis when made absolute and presented in the form that the psyche is the sole source of law and the only cause for its change - becomes a false thesis without any foundation in reality.

## 5. EMOTIONAL PSYCHOLOGY AS A RESEARCH METHOD

In what manner can one investigate legal-state phenomena?

Petrazycki's answer is consistent: by the introspective method, through regular self observation and experiment. This is "not only the sole method of observation and becoming acquainted with legal (and moral) phenomena in a direct and credible manner but at the same time a means without which any acquaintance with legal and moral phenomena is "impossible" (Introduction, page 64).

Petrazycki not only considers emotional psychology as the basis for the theory of the state, law and morality which interests him most but also thinks that this introspective-psychological method of research represents the methodological and psychological introduction to all theoretical sciences, "to the humanistic sciences in general, not only to the theoretical ones in the limited meaning, but also to historical studies, descriptive and applied (pedagogical, political, etc) which belong to this field" (Introduction, page 214).

Thus the works by Petrazycki which we have discussed represent not only an exposition of state and legal theory, but they are general philosophic works which claim to be recognized as textbooks for a general methodology.

The method of analysis based on the approach where judgments are made about social phenomena and where conclusions are made primarily on the basis of experiences, ideas or thoughts of the individuals is generally called subjective. In order to create a scientific theory of law, it is necessary to analyze objectively the part played by given legal rules in society, the true sources of law, investigate what interests and which social classes are defended by the law, etc. The point of departure should be the objective role of law, the objective content of its regulations. From this point only will it be possible to make the next step and investigate the influence of law upon the psyche of people, upon their behavior, what people think of the law in general and of given rules in particular, etc. In other words, investigate the problem of legal consciousness. The path of learning leads from an objective analysis of the content and role of law and the state to an analysis of legal consciousness, and not vice versa (and that is the way Petrazycki does it): from analysis of human concepts about what law is, to the establishment of what the nature of law is. As a result, from Petrazycki's point of view, law becomes a phenomenon frequently or even exclusively psychological and as a result de-objectivized and even intangible [See Note]. This is the basis for Petrazycki's philosophic idealism. Since the point of departure for Petrazycki is the psyche, the consciousness of individual units, we can consider that Petrazycki's doctrine is characterized by subjective idealism. (Note: That is why Petrazycki was unable until the end of his life to solve such a fundamental problem, as the difference between what he calls official law and what he

describes as unofficial law. He is even forced to admit this in a book entitled Behavioral Impulses and the Essence of Morality and Law (Polish edition, Warsaw: T. Wojnar Bookstore, issued by K. Twardowski), mentioning that the essence of official law (i.e. that which practising lawyers call the "law in its legal meaning" - page 48) has been impossible "to date to define by legal science," and his theory may contribute to the solution of this puzzle" (Ibid.).

As often as we deal with the system of subjective idealism, we must always ask ourselves the question which is typical and fundamental: how is that social phenomena which, e.g. in Petrazycki's approach, are something frequently psychic, the creation of imagination by a given individual, are felt in a similar manner by other people and are similarly reflected in their consciousness? Since the entire world, and in this instance the whole framework of legal norms and state institutions, is the result of the psyche of individual units - will this all not cease to exist together with the death of the persons themselves? Each system based on subjective idealism in the course of inescapable logic is led to so-called solipsism, although the greater part of adherents to this philosophy defends itself against these consequences. L. Petrazycki also defends himself against solipsism, introducing the concept of the unconscious, congenial adaptation of people and the infection with certain ideas. But this concept does not liberate Petrazycki from the limitations of his own philosophy. The question thus arises: why do people become "infected" with certain ideas, why do they think alike regardless of everything? The correct answer can only be as follows: human consciousness is the reflection of the world which exists objectively, regardless of the existence or imaginations of individuals. The objective existence of the world in nature and society, the objective existence of social institutions and state institutions, the obligation of legal norms apart from individual consciousness - that is what causes people to think the same way about certain facts or similarly, that the thoughts of each person - although they are something personal, his own, subjective - nevertheless represent the reflection of objective reality. Only in this manner can one solve the problem which has been posed by Petrazycki and which to a certain extent can be brought down to the observation that certain strata, groups or classes of people look upon the state and law in the same manner. Law itself - and here we have a step forward by Petrazycki in the development of bourgeois jurisprudence - can not be realized, can not be applied without the personal engagement of people, without subjective feelings. For legal positivism and subsequently the pure theory of law (Hans Kelsen), the entirety of jurisprudence was exhausted essentially on the basis of establishing what is law, which norms are binding. Petrazycki, on the other hand, is right in calling our attention to a different aspect in the implementation and application of law, the subjective aspect.

Petrzaycki is absolutely correct that law can not be applied - can not even exist - without the consciousness, feelings and activities of individuals and entire groups as well as social classes. The law, according to Petrzaycki, is not realized of its own accord. This statement is right, and numerous consequences for the theory of law result from it. It is certain, i.e. that if one wants to criticize Petrzaycki's theory from a really deep, scientific point of view - then it is not sufficient to limit oneself to the statement that the point of departures in Petrzaycki's works is unscientific, idealistic, etc. It is necessary to overcome the one-sidedness of i.e. university textbooks in their coverage of legal theory, a one sidedness which is based upon bringing the lecture on the essence and role of law down to its objective content without any broad, i.e. scientific treatment of the connection between law and legal consciousness. Especially in a society building socialism, in which the part played by the progressive and rational mode of thinking by the citizens is constantly increasing, when a strong state can only exist finally in the consciousness of the masses, in this period it is especially important to analyze the subjective aspects of the obligation and the implementation of law.

Petrzaycki is right when he points to the connection between the scientific politics of law and the necessity to investigate the legal psyche of society. Petrzaycki is not of course the founder of the concept of the scientific politics of law, as certain authors attempt to present him, [See Note] since the politics of law must take as its basis the objective requirements for the development of social life as well as the level of legal consciousness among society. Petrzaycki, in calling our attention to this latter aspect is right, because the politics of law which do not take into consideration the level of culture in society, its morality, discipline, etc. would be completely out of touch with life and as a consequence would lead into a dead end. However, considering in the politics of law only the psyche of citizens, without concern for the trends and need for economic, social, cultural, political development - the analyses of which is conducted by Marxism - would transform the politics of law into an activity without any perspective, without a clear aim, without hope. (Note: "The concept of a science about the politics of law was born in the years 1893-1895 in the work of L. Petrzaycki, Lehre vom Einkommen and was developed in his book, Introduction to the Science of Politics of Law." Adam Podgorecki, Foundations for the Politics of Law, Warsaw: Legal Publications, 1957, p. 5.).

#### 6. PLACE OF PETRAZYCKI IN DEVELOPING A DOCTRINE OF STATE AND LAW

The activities of Petrzaycki cover a period when bourgeois jurisprudence was dominated on the one hand by legal positivism and on the other by a ferment connected with the spreading of various schools, so-called renaissance of natural law, fideism, as well as the formulation around these schools of so-called free verdicts. Each of these schools had - understandably - its own philosophical basis and was the expression of various class interests during this historical period.

Legal positivism remained constantly the leading and almost universally acknowledged, at least by practicing lawyers, school of legal theory and consisted of a completely uncomplicated theory. Legal positivists argued that the main task of the lawyer is to know and to interpret the actually existing and binding norms of law. The lawyer should not be interested - in this manner we can express in brief the concepts of the classicists in legal positivism, i.e. Bergbohm on the continent and Austin in the Anglo-Saxon countries - in any questions dealing with the justice or injustice of the various legislative decisions. For the lawyer that is just which corresponds with the law. No other justice, independent of the law, metaphysical, is in existence. And even if it does exist, then at any rate the lawyer can not take an interest in it during the execution of his professional duties. Positivists thus decidedly rejected all of the ideas about natural law which played such a revolutionary part in the seventeenth and eighteenth centuries, they also rejected the concepts of the historical school, formulated primarily by Savigny and Puchta, i.e. that the law represents a concept not precisely defined of the "national spirit," that the true law is that based on custom and not legislated. These ideas were the expression of a feudal reaction to the French revolution as well as of the bourgeois-democratic system.

Legal positivism thus represented the ideology of the liberal bourgeoisie, a bourgeoisie that was satiated, which had already acquired power and desired to retain it in the struggle against the remnants of feudal reaction as well as against the increasing strength of the class antagonist, against the working class. This bourgeoisie did not wish anything else than the maintenance of the status quo. It believed that free competition would lead to positive results socially, that the interference of the state in the economy, culture, education, etc. is either unnecessary or should encompass a minimum in extent no larger than required. The law should only protect business (Hering) or protect the freedom of the individual (Mill, Bentham, etc.). This was a legal ideology, although it was propagated officially as a "non-ideology," a philosophy which announced that it rejected in the field of legal theory all philosophies and is based only on facts, i.e. legal norms; a philosophy which the limitations of bourgeois lawyers and their alleged apoliticism as well as isolation from social matters raised to the level of a virtue.

Petrzycki in struggling against the legal dogmatism was quite correct in stating that it is impossible to have a true science of law without a philosophy of law, that a lawyer must constantly operate with such concepts as the law and the state. If thus such concepts are not defined, then this unknown quantity "X" (i.e. law) will have to appear in all detailed definitions throughout the area of penal and civil law, i.e. essentially this will be a science based upon a foundation which actually does not exist. Criticism represents thus the strong side of Petrzycki's theory. Especially strong in his works are the places where he indicates the unscientific and incomplete aspects of those legal theories which bring law down norms issued by the state (Theory, paragraph 18) or to norms with sanctions or else having the character of compulsion (paragraph 19)

Petrazycki further showed the weak sides of various theories which make out of law the expression of a "universal will" (paragraph 20) as well as those theories which define law from the point of departure of normative legal content or their aim or usefulness (paragraph 21).

In many cases when Petrazycki criticises, he makes valuable comments also of a methodological nature. For example, in criticising theoreticians who compare the state with an organism and on this basis endow the state with characteristics borrowed from the field of organic life, Petrazycki writes:

"However, this analogy and its statement do not represent a scientific explanation for phenomena of social life, the latter possessing their own causes and requiring an appropriate explanation regardless of their similarity to other phenomena." (Note: Theory, Vol. I, p. 275, paragraph 12).

Attention is merited to Petrazycki's critique of the universal will theory and its different varieties.

However, Petrazycki was unable within the framework of his doctrine to connect the problem of will as well as the question of universal and individual will. He did not explain that there exists a defined, dialectical connection between what Rousseau calls the will of all (volonté de tous) and the universal will (volonté generale); [See Note]. A closer analysis of these problems as well as a creative development of them would lead, at least in the most essential points, to the known Marxist formulation that law represents the expression of the will of the ruling class. (Note: Compare along these lines: Theory of State and Law, edited by Stanislaw Ehrlich, Polish Scientific Publications, Warsaw: 1957, chapter IV, paragraph 2, entitled "The Will of the Individual and the Will of the Class Controlling the Means of Production," pp 66-70, prepared by M. Manelli).

Petrazycki's attitude was critical with regard to the ever more popular theories during that period, which have been designated with the not very precise name of freie Rechtslehre and which in Poland has been translated in general as the "school of the free verdict."

The individual representatives of this school attempted in the first years of the twentieth century to prove that the judge has the right to deviate from the rigid rules contained in legislation. Petrazycki, on the other hand, emphasizing the positive results of closely adhering to existing legal norms, defended the principles of legality, and in conditions of autocratic lawlessness which existed in Russia, the entirety of Petrazycki's concepts represented a liberal-bourgeois criticism of Tsarist absolutism and lawlessness. Petrazycki desired a "culturalization" and "positivization" of the court system and administration in Tsarist Russia.

Although Petrazycki was unable to provide the correct answer to questions which he himself brought up, he did show that contemporary jurisprudence, i.e. bourgeois, had not solved any fundamental problem of a philosophic and theoretical nature, while the existing definitions were - as he himself described them - burdened with the deficiencies of "invalidism"

or "rambling." Petrazycki assumed a negative attitude toward semantic concepts which were starting to develop at that time and which with the aid of linguistic analyses attempted to solve complex philosophical questions. Petrazycki is absolutely correct when he states that the so-called "linguistic definitions" should be found in dictionaries, since that is the appropriate place for them. These comments are still pertinent.

It is obvious from Petrazycki's writings that he knew the bases of Marxist philosophy.

In the pattern of almost all subjective idealists of that period, Petrazycki attempted to prove that materialism represents a philosophy, the foundations of which are voluntary. As did many others, he too when presenting materialistic theses simplified them.

According to materialism, says Petrazycki, everything "that exists is possessed of the same character, namely materialistic; according to this theory, all phenomena, physical as well as psychological, actually are physical phenomena and can be brought down to matter and its movement." After interpreting materialism in the spirit of Büchner, Vogt, and Moleschot who were famous for the claim that thoughts are the same type of creation by the brain as the secretions of the bile or the liver, it was not difficult for Petrazycki to arrive at the conclusion that the materialistic doctrine does not represent a "theory that has been proven scientifically but rather a spontaneous statement" (Introduction, p. 138).

It is striking that a thinker who was able to apply a detailed, deep, and annihilating criticism to almost all contemporary theories of bourgeois jurisprudence did not simply understand the essence of the dialectical-materialistic and -historical theories. Regardless of his undoubtedly great knowledge of individual works, he interpreted materialistic ideas in such a primitive manner.

However, dialectical materialism did influence him. This can be seen, i.e. in Petrazycki's categories for schools of philosophy which he divides into materialistic and idealistic (Introduction, pp. 138-139). In this connection, Petrazycki suffers from frequent illusions that his system of emotional psychology is neither materialistic nor idealistic.

When Petrazycki, however, takes a position against those who state that legal-state phenomena and even the state are allegedly something real and objectively existing, independently of the individual consciousness, he uses arguments and terminology that are characteristic of his contemporary schools of neo-Kantianism, empiricism, as well as all variants of so-called positivism. Materialism for him represents a position of "naive projectionism" which should be "replaced with a scientific-psychological approach." It is necessary to apply the appropriate "psychological research methods which will contribute to a rejection of the "naive projectionistic theory of law" (Theory, p. 346). As a result of this, all theories of law and of the state which recognize the socially objective character of these institutions are for Petrazycki "naively realistic, naively nihilistic, and naively constructionist" (Introduction, paragraph 2; Theory, p. 359, paragraph 17).



Petrazycki attempts next to arrive at the sources for these "naively materialistic theories." The reason for their origin lies allegedly in the emotional nature of law with which is connected the experiencing of emotional phantasms or projections. They cause the impression that what is actually a product of fantasy is accepted as a real phenomenon. At the same time, it is not seen that the only reality is what exists inside of man and not what is outside of him. In other words: people who assume the position, which is the only correct one, that legal and state institutions, privileges and obligations have a socially objective character, that they exist independently of individual consciousness - all of these people according to Petrazycki are naive, limited, and easily made to believe like the man (one of Petrazycki's typical examples) who was asked for the object in the sentence "Zeus is the king of the Olympian gods" would proceed to Mount Olympus in order to find Zeus there. The materialist, recognizing the existence of objects and processes in society which are independent of human consciousness, is - according to Petrazycki - a man subject to optical illusion (Introduction, p. 51 ff). And since, as Petrazycki claims, there exists a soil for these illusions, hence materialism, this "naive realism," represents something that has spread.

A similar kind of philosophic meandering is also in J. Lande's works. In his last article about Petrazycki (Petrazycki's Sociology, written in 1952 and first published in the periodical "Culture and Society" in 1957) assumed the task of defending Petrazycki against attacks of subjective idealism. Hence, he calls him a realist, because he differentiated norms as idealistic creations from "realistic equivalents," i.e. psychological experiences (Studies in the Philosophy of Law, p. 858). But this is the essence of subjective idealism that psychological experiences are recognized as real, while they are subjective reflection of objective reality. If later Lande acknowledges that for Petrazycki the "real," i.e. "psychological plane" (Ibid., p. 862) for research is more important than the logical, social, etc., then he also recognizes Petrazycki as a "psychologist" against which he so vehemently protests in the very introduction of his work (p. 845 ff.), (I am citing from the book: Jerzy Lande, Studies in the Philosophy of Law, State Scientific Publications, 1959).

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From the political viewpoint, Petrazycki's attitudes were probably closest, at least objectively and perhaps even subjectively, to the views of that school of thought represented in Russia by the great-bourgeois party of constitutional democrats. At the same time, the wealth of thought incorporated in the writings of Petrazycki would lead to an impoverishment of his scientific contributions were we to attach to it a label. Petrazycki's theory, although it represents the transfer of principles from subjective idealism into the field of state and law theory, also has a rational character above all of an anti-fideistic significance. Also included are elements of the dialectic, the pointing out of connecting phenomena, as well as their constant development.

Even if he uses such phrases as e.g. love of one's neighbor, he very clearly qualifies it as not coming from the gospel but rather from sociology.

Petrazycki did not recognize the interference of any elements higher than man. Man is to him - if we can use in this instance the phrase of the sophist Protagoras - the measure of all things, the only point of reference, the sole creator of history, the only source of social reform. Especially his thinking in the book entitled, The University and Science, includes an appeal to lecturers that they treat their students as intelligent beings, that their own teaching be based exclusively on logic and argumentation, that they not allow the propagation of any spontaneous statements which can not be proven. As a theoretician, scientist, and educator of youth, he was an atheist.

From the imperative-attributive psyche, Petrazycki evolved the rights of a citizen to political freedom: personal immunity, honor, freedom of speech, press, consciousness, meetings, associations, etc. (Theory, Vol. I, paragraph 11, p. 272). He propagated religious tolerance. This explains the friendship between Petrazycki and L. Krzywicki as well as his participation in the struggle against national democratic and clerical elements which did not want to allow S. Askenazy to assume a full professorship at the University of Warsaw.

Marxists have the undoubtedly complicated task of fully and thoroughly analyzing the works of Petrazycki, a creative and unschematic victory over his individual theoretical concepts. It is also necessary to consider in future critical works those doctrines in Europe and America, especially in the Scandinavian countries (e.g., Olivercrony, "Is a Sociological Explanation of Law Possible?", Theoria, A Swedish Journal of Philosophy and Psychology, Vol. XIV, Part 2, 1948), which are based on Petrazycki's emotional psychology. These studies critical of Petrazycki must proceed hand in hand with the development of such Marxist fields of theory of law as e.g. the influence of actually existing legal norms upon the human psyche in general and upon the legal consciousness in particular, like the connection between legality and legal consciousness, etc. However, victory over Petrazycki's theory can not be based upon an eclectic linking of the Marxist and Petrazycki's theories of the state and law. [See Note]. This must be a creative victory, on the basis of the materialistic outlook upon the world, without any attempts at blurring the main schools of philosophy as well as trends in the theory of state and law, without attempts at an artificial connection between the elements in various philosophical schools which are a priori unsuccessful. If we proceed in this direction with the work of theoreticians in the area of state and law in People's Poland, if during the course of criticising the ever living and vital views of Petrazycki it is possible to provide answers that are more perfect to the individual, pertinent questions that arise in the Marxist theory of state and law, if in this manner the general levels of theoretical studies of law are raised, only then will it appear in full how justified is the